

EXHIBIT 471

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -

IN RE: NATIONAL	:	
PRESCRIPTION	:	MDL No. 2804
OPIATE LITIGATION	:	
	:	Case No.
	:	1:17-MD-2804
THIS DOCUMENT RELATES	:	
TO ALL CASES	:	Hon. Dan A. Polster

- - -

Monday, January 7, 2019

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

- - -

Videotaped deposition of TOM NAMETH, held at
the offices of Cavitch, Familo & Durkin,
1300 East Ninth Street, Cleveland, Ohio, commencing at
9:03 a.m., on the above date, before Carol A. Kirk,
Registered Merit Reporter and Notary Public.

- - -

GOLKOW LITIGATION SERVICES
877.370.3377 ph | 917.591.5672 fax
deps@golkow.com

1 understand the math.

2 Q. I gotcha. But you'd agree that
3 each month they could increase 98 percent over
4 what their last 12-month average was and it
5 wouldn't show up on the report; is that correct?

6 A. Well, it's an increment -- when
7 you're looking at it on a month to month on a
8 rolling 12, I don't -- when you average in the
9 whole year, I don't think it -- I'm not quite
10 sure. I'd have to look at the math, you know,
11 and if it pops on that report.

12 Q. Okay. So my question was, I'm
13 trying to frame my question in a way that --

14 A. Well, I -- yeah. You're trying --

15 Q. Let me ask --

16 MR. JOHNSON: Let him ask you --
17 let him --

18 Q. So my question is: If you
19 could -- that a store could increase its orders
20 every month, right?

21 A. Mm-hmm.

22 Q. Under that formula just generally
23 over time and without having any of those
24 ordering patterns show up on that report,

1 correct?

2 A. If you're only looking at a month
3 to month, you're correct in your statement that
4 you wouldn't see that. But when you throw in
5 the rolling average of 12, I don't know if that
6 skews that number.

7 Q. Well, let's say in month 12 you
8 increase your orders by 98 percent, all of a
9 sudden your 12-month average went up, didn't it?

10 A. Yes.

11 Q. And so then you could then
12 increase again by 98 percent, which would then
13 again bring your --

14 A. I don't think on a monthly -- each
15 month that would -- you could do a 90 -- or
16 100 percent, whatever it is, 99 percent every
17 single month and increase that because it's a
18 rolling 12. It looks back -- you know, it's
19 slow -- it's a slow progression.

20 Q. Right. So the January before
21 rolls off when the --

22 A. Okay. Yes. Yes.

23 Q. -- most recent January goes on.

24 A. Mm-hmm.

1 (Reporter clarification.)

2 A. I'm sorry.

3 Q. The -- yeah. We talked over

4 there, each other.

5 So your January from last year

6 rolls off the report when your January from this

7 year gets added?

8 A. Yes.

9 Q. Okay. And so if your January from

10 last year was five bottles and your January this

11 year was ten, your average goes up, right?

12 A. Yes.

13 Q. Which then raises the amount that

14 you could order in February without that amount

15 showing up on your report, correct?

16 A. I'm taking your word for it.

17 Q. Okay. I mean --

18 A. Without doing the math, but yes.

19 Q. Right. Well, and I haven't given

20 you any specific math. And it's your report.

21 So I'm just trying to understand how this would

22 work and how things would show up.

23 A. Yeah.

24 Q. Okay. How often would stores show

1 up on this report?

2 A. They would show up on the report
3 with some frequency. It depends on if it's
4 cough and cold and flu season, then you're going
5 to see more cough syrups report -- on the
6 report. But how often a particular store?

7 Q. I guess what I want to know is,
8 Tom goes into work on January 1 -- I'm sorry for
9 calling you Tom. Mr. Nameth.

10 A. That's fine.

11 Q. Mr. Nameth goes into work on
12 January 1. The report prints out. It lands on
13 your desk. Are all 74 stores on that report --

14 A. Yeah.

15 Q. -- showing stuff that's exceeded
16 the 99 percent rolling average?

17 A. All stores are on the report but
18 there could be blank pages that they don't show
19 anything.

20 Q. Okay. So if no stores' order
21 history trigger this reporting system that had
22 been set up, they would just have the store but
23 nothing underneath?

24 A. Right.

1 Q. And how common was it for the
2 store to be listed with nothing underneath it?

3 A. I would say it was not that common
4 for having a store having nothing. So we had to
5 review each -- you know, it was fairly time
6 consuming to do, but ...

7 Q. Let's talk about opioids.

8 A. Yeah.

9 Q. When would this report print?
10 Would it be the first of the month?

11 A. Yes.

12 Q. Okay. And would that be the thing
13 you'd expect to spend that day doing, looking at
14 that report?

15 A. Generally, yeah. I mean, it was
16 something that took some time.

17 Q. Okay. How many days would you
18 spend on it?

19 A. It depends on how much time I had.
20 It could be several hours to, you know, a day
21 maybe, looking at it.

22 Q. Okay. Would it ever take you more
23 than a day to go through that report and do
24 whatever due diligence you needed to do?

1 A. Not that I recall.

2 Q. Okay. And how many stores would
3 you say on average would show up on that report
4 regarding opioid purchases?

5 A. Strictly opioids?

6 Q. Correct.

7 A. There might be a dozen stores.

8 Q. Okay. So 12 of the 74 stores
9 would appear on average, just generally on a
10 given month showing that their orders for the
11 last month for opioids were greater than
12 99 percent of their 12-month rolling average; is
13 that fair?

14 A. Yeah. Now, that number -- when we
15 got towards 2012, '13, '14, those numbers seems
16 to -- seemed to decrease.

17 Q. Do you know why that was?

18 A. I do not know.

19 Q. Did you ever look into why the
20 amount of times a store appeared on that report
21 went down around that time frame?

22 A. No.

23 Q. Okay. So you noticed a marked
24 decline in stores showing up on your suspicious

1 order monitoring report and you didn't do
2 anything to figure out why?

3 A. If they decreased?

4 Q. Correct.

5 A. No, I did not.

6 Q. Okay. Do you have any idea today
7 why fewer stores were showing up on your
8 suspicious order monitoring report starting in
9 2012?

10 A. No.

11 Q. Are you aware that that time frame
12 more or less coincides with when this opioid
13 crisis really kind of got blown out of
14 proportion? Excuse me. Blew up is the word I
15 was looking for.

16 A. I think that it was more in the
17 news and there were some policies that the State
18 Board of Pharmacy made -- and, you know, I'm --
19 again, I'm not quite sure of the year, but there
20 was some changes to the board of how many
21 opioids you could dispense at a particular time,
22 so ...

23 Q. Do you know what those rules are?

24 A. Quantities, you know -- actually,

1 the big thing was when hydrocodone went to
2 Schedule II, but now you're talking, what, I
3 think in '14. So prior to that, not really. I
4 don't know why that would have been.

5 Q. So you told me that you thought
6 about a dozen stores would show up regarding
7 opioids on a monthly basis on that report. Was
8 that prior to 2012 or was that --

9 A. Yeah. I think that -- that was
10 probably around '12, '13. Prior to that, it
11 might have been slightly more on -- strictly on
12 the opioids.

13 Q. Okay. And you would spend upwards
14 of a day looking into that and doing due
15 diligence to determine whether that ordering
16 pattern was suspicious?

17 A. I don't know if I would say
18 upwards of a day.

19 Q. Okay. So --

20 A. A portion of the day.

21 Q. Okay. And what would that -- what
22 would the time that you spent -- what would you
23 spend that time doing?

24 A. Reviewing each particular order

1 that would show on the report, looking at what
2 store it was, determining to the best of my
3 knowledge why that would be, and then sending
4 out reports to the store. You know, generating
5 another report to the store to ask them, you
6 know, why they had an increase.

7 Q. Okay. Did you always send the
8 form to the store?

9 A. I'm sending the forms and it would
10 always go to the store, yes.

11 Q. Okay. So any time that a store
12 showed up on that report, you would send a form
13 asking them to explain why their ordering had
14 increased?

15 A. No.

16 Q. Okay.

17 A. I mean, that's when I used a
18 judgment.

19 Q. So this report would populate
20 automatically, correct?

21 A. Yes.

22 Q. And you would get the report,
23 correct?

24 A. Right.

1 Q. And you were primarily responsible
2 for reviewing it, correct?

3 A. Yes.

4 Q. And you'd spend a couple hours on
5 the day that it populated reviewing it, right?

6 A. Right.

7 Q. And depending upon what popped out
8 at you, you would then decide whether to send a
9 form to the store asking for more information
10 about why --

11 A. Well, you know, if the volume --

12 Q. Hold on. You would then send a
13 form that would ask them to explain why their
14 orders increased, correct?

15 A. Yes, but I would send a form -- if
16 the quantities went from one to two or three, I
17 generally would not send a report. If the
18 quantities went from five to ten, that would
19 generate a report, so ...

20 Q. Why would five to ten generate a
21 report to the store and not one to three?

22 A. Well, when you're looking at ups
23 and downs in the marketplace and all the
24 variables, you know, when you're talking about

1 increase by one bottle, so to speak, that
2 necessarily would not, in my mind, generate a
3 report that would lead to a possible suspicious
4 order.

5 Q. Okay. That was a judgment call
6 you made, right?

7 A. Yes.

8 Q. And what was the purpose of the
9 report that you would send to the stores?

10 A. Well, it was twofold, in my
11 opinion anyway. One was to see why the
12 increase. The second was to see, after they do
13 the math of -- say, like they had an increase in
14 the number of volume of scripts, I also wanted
15 to know whether or not the remaining bottles
16 were on the shelf, or if there was some
17 diversion where someone was -- you know, are we
18 missing bottles? Because if they had ordered
19 ten bottles and five were used for filling
20 scripts, they better have five on the shelf, so
21 to speak.

22 Q. Did you ever send out one of those
23 forms and get a response back that, you know,
24 we're missing two bottles and so we had to

1 replace them?

2 A. Not that I recall.

3 Q. Okay. Do you ever recall any
4 issues regarding missing controlled substances?

5 A. At store level?

6 Q. Correct.

7 A. There have been situations at
8 store level where there have been missing
9 controlled substances.

10 Q. Is that a common occurrence?

11 A. Not really.

12 Q. Okay. So it was uncommon?

13 A. I would say.

14 Q. Do you think DDM did a good job of
15 preventing diversion at its store level?

16 A. I think we did.

17 Q. Okay. All right. So let's just
18 recap this because I want to make sure I fully
19 understand. So at some point in the '90s, DDM
20 designed this report that would generate
21 monthly, right?

22 A. Yes.

23 Q. Okay. And the monthly report had
24 every store on it, right?

1 A. Yes.

2 Q. And it would show the rolling
3 12-month average for -- well, it would reflect
4 the rolling -- strike that.

5 The formula used to decide whether
6 an ordering history would show up for a given
7 store was whether it exceeded the prior 12-month
8 rolling average by 99 percent, right?

9 A. Yes.

10 Q. Otherwise nothing would show up,
11 right?

12 A. Right.

13 Q. Okay. And so this report, did it
14 get e-mailed to you? Was it printed?

15 A. Printed.

16 Q. Okay. So this report comes out
17 and you go and you grab it and then you look at
18 it, right?

19 A. Correct.

20 Q. And you spend a couple hours and
21 you look at all the orders or the ordering
22 history that shows up. And you'd agree that
23 we're talking about ordering history, right, not
24 necessarily a specific order?